

COTTONWOOD HEIGHTS

RESOLUTION No. 2021-47

A RESOLUTION APPROVING A FUNDING AGREEMENT WITH CENTRAL UTAH WATER CONSERVANCY DISTRICT

WHEREAS, the city of Cottonwood Heights (the “City”) is developing Ferguson Canyon Park, a multi-faceted open space amenity (the “Project”) located at 7725 South Wasatch Blvd., which will serve as a public park, off-leash dog-park, and trailhead for Ferguson Canyon and the Bonneville Shoreline Trail; and

WHEREAS, Central Utah Water Conservancy District (the “District”) provides water service in the City and elsewhere, and desires to encourage quantifiable water savings—estimated at approximately 948,894 gallons per year--by granting up to \$45,544.55 (the “Grant”) to defray the City’s cost of installing water-efficient landscaping in the Project, all on the terms and conditions specified in a proposed “Landscape Leadership Funding Agreement” (the “Agreement”) between the City and the District; and

WHEREAS, the City’s municipal council (the “Council”) met in regular session on 21 September 2021 to consider, among other things, authorizing the City to execute, deliver and perform under the Agreement; and

WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the City’s residents to approve the City’s entry into the Agreement as proposed;

NOW, THEREFORE, BE IT RESOLVED by the city council of the city of Cottonwood Heights that the City’s entry into, and performance under, the Agreement is hereby approved, and that the City’s mayor and recorder are authorized and directed to execute and deliver the Agreement and any related documents and instruments on behalf of the City.

This Resolution, assigned no. 2021-47, shall take effect immediately upon passage.



PASSED AND APPROVED this 21st day of September 2021.

ATTEST:

By: 
Paula Melgar, Recorder

Heather Snodquist,
Deputy Recorder

COTTONWOOD HEIGHTS CITY COUNCIL

By: 
Michael J. Peterson, Mayor


VOTING:

Michael J. Peterson

Yea ☒ Nay ☐

Douglas Petersen

•Yea ☒ Nay ☐

J. Scott Bracken

•Yea ☒ Nay ☐

Tali C. Bruce

Yea ☐ Nay ☐

Christine Watson Mikell

Yea ☒ Nay ☐

DEPOSITED in the office of the City Recorder this 21st day of September 2021.

RECORDED this ___ day of September 2021.

LANDSCAPE LEADERSHIP FUNDING AGREEMENT

This Agreement is made and entered into as of September 1, 2021 (the "Effective Date"), by and between the Central Utah Water Conservancy District ("District"), a water conservancy district organized under the laws of the State of Utah, and the City of Cottonwood Heights ("Recipient"), a municipality within the District's service area.

RECITALS:

- A. The District desires to provide funding assistance to the Recipient for a water-efficient landscape project within the District's service area relating to the Ferguson Canyon Park (the "Project");
- B. The Recipient wishes to obtain funding assistance from the District and represents that it has met the eligibility requirements as specified in Exhibit A; and,
- C. The Recipient has submitted to the District a proposal outlining the Project and requesting funding assistance, and the District is willing to provide funding assistance, consistent with the terms of this Agreement.

TERMS:

The parties agree as follows:

- 1. Project Description: A description of the Project to be completed by the Recipient is set forth in attached Exhibit B. The District estimates the Project will conserve approximately **948,894 gallons** annually.
- 2. Project Schedule: The Project shall be completed by the Recipient in accordance with the schedule set forth in Exhibit B.

3. Project Administration and Correspondence

- a. The person designated to administer the Project and to act as the chief contact for

the Recipient is:

Samantha DeSeelhorst
City of Cottonwood Heights
2277 E. Bengal Boulevard
Cottonwood Heights, UT 84121
801-889-7970
sdeseelhorst@ch.utah.gov

- b. The person designated to represent the District in connection with this Agreement

is:

Casey Finlinson, Conservation Education Director
Central Utah Water Conservancy District
1426 E. 750 N. Suite 400
Orem, UT 84097
801-226-7145
casey@cuwcd.com

4. Recipient Responsibilities and Ownership.

- a. The Recipient and/or its representatives shall provide all labor, services, supplies, and materials to implement and complete the Project, including but not limited to administration, promotion, marketing, management, data collection, analysis, and reporting.
- b. All materials and supplies necessary to implement and complete the Project shall be the exclusive property of the Recipient. The District shall have no ownership, right, title, security interest, or other interest in any Project facilities, materials, or supplies, nor in any rights, duties, or responsibilities for their operation or maintenance.
- c. The Recipient shall comply with all applicable federal, state, and local requirements to implement and complete the Project.

- d. The Recipient shall be solely responsible for the performance of its staff and/or representatives in complying with the terms of this Agreement, and for the proper allocation of funds received from the District for implementing and completing the Project.
- e. The Recipient shall timely prepare and submit invoices and report(s) to the District as further described in this Agreement.
- f. The Recipient shall timely pay its share of the costs of the Project, and it shall be solely responsible for payment of its staff, contractor(s), and representatives for their work and expenses to implement and complete the Project.

5. Cost Estimate and Funding.

- a. The funds provided by the District to the Recipient shall not exceed forty-five thousand five hundred forty-four and 55/100 Dollars (\$45,544.55).
- b. A Project cost estimate showing the funding amounts to be paid by the District and by the Recipient is set forth in attached Exhibit C. All costs greater than the cost estimate shown in Exhibit C, which are necessary to implement and complete the Project pursuant to this Agreement, if any, shall be paid by the Recipient. The Recipient shall pay no less than fifty percent (50%) of the total cost of the Project.

6. Invoicing Requirements.

- a. The Recipient shall invoice the District within thirty (30) calendar days following final completion of the Project.
- b. Each invoice shall be sufficiently detailed to allow for review and approval by the District and shall include the following: a cover letter indicating that the District has performed a satisfactory final inspection and that the Project is complete, a detailed

breakdown of the costs submitted for the reimbursement, and documentation supporting the invoice;

- c. Invoices shall include a breakdown of the completed landscaped areas for the Project, including turf grass area(s), planting bed area(s), and hardscaped area(s).

The District shall pay Recipient for the completed Project as follows:

Turf grass area(s): \$0.00 ft²

Planting bed area(s): \$1.07 ft²

Hardscaped area(s): \$0.00 ft²

- d. Invoices for the Project shall include a report summarizing and documenting implementation of the Project in sufficient detail to demonstrate the Project has been completed in accordance with the requirements and conditions of this Agreement.
 - e. Payment by the District to the Recipient shall be made within thirty (30) days following receipt of an invoice that is satisfactory to the District.
7. Periodic Meetings and Inspections. The District, at its discretion, may request periodically meeting for review, and conduct periodic inspections, of the Recipient's progress toward implementation and completion of the Project, including an initial meeting and site visit prior to commencement of the Project.
8. Variations in Project. The District may authorize minor variations in the Project as described in Exhibit B when such variations do not involve an adjustment in the overall intent of this Agreement. Variations that are deemed by the District to be minor shall require written approval by the District.

9. Use of Information.

- a. The District hereby is authorized by Recipient to use and publish, without charge to the District, the Recipient's contact information, logos, trade names, and trade/service marks, and Project descriptions, locations, images, and videos for public relations, advertising, or marketing purposes.
- b. The Recipient hereby authorizes the District to request and receive from the Recipient's water provider all water meter usage information for five (5) full years prior to and following completion of the Project.
- c. Notwithstanding the expiration of this Agreement or its termination, the provisions of this paragraph 9 shall survive for six (6) years following the Effective Date.

10. Funding Requirements.

- a. The District is funding Recipient's Project for at least the following objectives: to reduce permanently the demand for water, to promote and provide a prominent and appealing example of water-efficient landscaping within the District's service area, and to defer the need for water infrastructure.
- b. Recipient shall comply with the Water-efficient Landscaping Requirements for design and maintenance of the Project, which are set forth in attached Exhibit D.
- c. For a period of 5 years from the end of the Term of this Agreement, as defined in Paragraph 13, or for so long as Recipient owns the Project, Recipient hereby agrees to sustain the Project in accordance with Exhibit B, to the extent reasonably practicable. Without the District's consent under this subparagraph 10c, any intentional modification whatsoever to the Project, including without limitation the installation of additional irrigated lawn or grass, spray irrigation systems, swimming pools, ponds, or other bodies of water or water features within any areas depicted

and/or described on Exhibit B, shall constitute a breach of this Agreement. In the event of breach, Recipient shall repay the District the full amount funded to Recipient pursuant to this Agreement within sixty (60) days following the District's written notice of breach to Recipient.

11. Final Inspection and Completion. Recipient shall complete the Project timely and notify the District in writing. The District may then inspect the completed Project for compliance with the terms of this Agreement. If the Project fails inspection, the Participant will be granted forty-five (45) days or the remainder of the one (1) year term, whichever is greater, to complete the Project, with subsequent written notice to the District and an opportunity for the District to make another inspection.
12. Indemnification. The Recipient shall protect, indemnify, defend, and hold harmless the District, its Trustees, officers, employees, and agents (collectively, the "Indemnified Parties") from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs, and expenses (including, without limitation, attorney's fees, court costs, and expenses) imposed upon or incurred by or asserted against the Indemnified Parties by reason of the Recipient's or its employees', contractors', or agents' actions or inaction, whether intentional or negligent, related to or arising out of the Project and/or the performance of this Agreement.
13. Term. This Agreement shall begin on the Effective Date and it shall expire on the first to occur of the following: (i) final payment by the District; or (ii) twelve (12) months following the Effective Date. Notwithstanding the expiration of this Agreement or its termination, the obligations required of Recipient in subparagraph 10c of this Agreement shall survive for the period indicated.

14. Notices. All notices, requests, demands, and other communications required or allowed by this Agreement shall be in writing and shall be given by personal delivery or by certified mail, with return receipt requested, to the following addresses or to such other addresses as the parties may designate in writing:

If to District:

Central Utah Water Conservancy District
Attn: General Manager
1426 E. 750 N. Suite 400
Orem, UT 84097

If to Recipient:

City of Cottonwood Heights
Attn: Samantha DeSeelhorst
2277 E. Bengal Boulevard
Cottonwood Heights, UT 84121

Notice shall be effective on the date it is received by the other party.

15. Amendment. This Agreement may be amended only by written instrument signed by both parties.
16. Binding Nature. All of the grants, covenants, terms, provision, and conditions in this Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties.
17. Assignment. The Recipient shall not assign this Agreement or any of its rights under this Agreement without the prior written consent of the District. The District may assign this Agreement and/or any of its rights under this Agreement.

18. Whole Agreement. This Agreement, including exhibits, constitutes the entire agreement of the parties and supersedes all prior understandings, representations, or agreement of the parties regarding the subject matter in this document.

19. Authorization. The Recipient represents and warrants that it has authority to enter into this Agreement. In addition, each individual executing this Agreement does hereby represent and warrant that he or she has been duly authorized to sign this Agreement in the capacity and for the entities shown.

20. Miscellaneous. The parties shall perform those acts and/or sign all documents required by this Agreement and which may be reasonably necessary to effectuate the terms of this Agreement.

"District":

Central Utah Water Conservancy District

Dated: _____

September 2, 2021

By: _____



Gene Shawcroft

Its General Manager

ATTEST:



Lisa Anderson

Assistant to the General Manager

"Recipient":

[Funding Recipient]

Dated: _____

By: _____

Its: _____

EXHIBIT A
ELIGIBILITY REQUIREMENTS

- A. Recipient must be a commercial business, builder/developer, institution, property management company, homeowner association, or municipality.
- B. Project must be located within Central Utah Water Conservancy District's service area and outside of Jordan Valley Water Conservancy District's (JVWCD) service area. This includes Duchesne County, Juab County, Sanpete County, Uintah County, Utah County, Wasatch County, and the areas of Salt Lake County not covered by JVWCD.
- C. Project must provide quantifiable water savings.
- D. Project must have high promotional, marketing, or press appeal.
- E. Landscape changes must be voluntary and not for the purpose of complying with a governmental code or policy.

EXHIBIT B

PROJECT DESCRIPTION AND SCHEDULE

PROJECT DESCRIPTION

Ferguson Canyon Park will be a multi-faceted open space amenity within Cottonwood Heights. Located at 7725 S. Wasatch Boulevard, this space will serve as a public park, off-leash dog park, and trailhead for Ferguson Canyon and the Bonneville Shoreline Trail. The vision for this park is to provide a visual and physical gateway to nearby canyon recreation, and as such, the landscaping design relies heavily on natural biota and materials, especially those with waterwise qualities.

In terms of eligibility, this application has been submitted by a municipality located within Salt Lake County, but not served by Jordan Valley Water Conservancy District. It provides quantifiable water savings, estimated by the Grant Calculator at over 2,000,000 gallons per year. The project has high promotional value as it is located in a highly visited area of Cottonwood Heights, which will continue to see visitation from a variety of local and regional user groups due to the diversity of amenities it provides (i.e. local families, dog owners, trail users, etc.)

The project landscaping and irrigation has been voluntarily designed to solely utilize drip irrigation without any turf area. The irrigation will be controlled via a WaterSense controller, providing sufficient water for native plant materials that will exceed 50% coverage at maturity.

The full landscape and irrigation plans for this project will be emailed to CUWCD staff. We anticipate starting this project in September, when the work will be bid out to a qualified contractor. Construction will commence through Spring 2022, and a detailed schedule will be provided once finalized with the selected contractor.

Thank you for your consideration of this project. We look forward to providing a community space that effectively demonstrates waterwise landscaping as not only sustainable, but also as durable and beautiful. We anticipate that this park will serve as a precedent for other municipalities looking to incorporate similar spaces in their communities, as well as a precedent for residents and business owners in Cottonwood Heights who are committed to conserving water.

PROJECT SCHEDULE

September 1st 2021 – May 1st 2022

GRANT FUNDING

The District will provide grant funding for the actual landscaped area for the project as proposed. Exhibit C is for estimation purposes only.

EXHIBIT C
PROJECT COST ESTIMATE

Recipient's Total Project Cost Estimate:

\$750,000.00

Estimated Project Size:

Turf Grass Area(s):	0 ft ²
Planting Bed Area(s):	42,565 ft ²
Hardscaped Area(s):	0 ft ²
Total:	42,565 ft ²

Estimated Grant Amount:

Turf area(s):	\$0.00/ft ²
Planting bed area(s):	\$1.07/ft ²
Hardscaped area(s):	\$0.00/ft ²
Total:	\$45,544.55

EXHIBIT D

WATER-EFFICIENT LANDSCAPING REQUIREMENTS

- A. All irrigation shall be appropriate for the designated plant material to achieve the highest water efficiency. Drip irrigation or bubblers shall be used except in turf areas.
- B. Each Irrigation valve shall irrigate landscaping with similar site, slope, and soil conditions and plant materials with similar watering needs. Turf and non-turf areas shall be irrigated on separate irrigation valves. In addition, drip emitters and sprinklers shall be placed on separate irrigation valves.
- C. Landscaped areas shall be provided with a WaterSense labeled smart irrigation controller, which automatically adjusts the frequency and/or duration of irrigation events in response to changing weather conditions. All controllers shall be equipped with automatic rain delay or rain shut-off capabilities.
- D. Adequate surface treatments shall be used to control weeds and improve the appearance of the landscaping. At least 3-4 inches of mulch permeable to air and water shall be used in planting beds. Common surface treatments shall include rock, bark, or compost.
- E. At maturity, landscapes shall have enough plant material (perennials and shrubs) to create at least 50 percent living plant cover at the ground plane, not including tree canopies.
- F. Turf shall not be placed in park strips, designated pathways, or on slopes greater than 33%. Lawn areas shall not be less than eight (8) feet wide.
- G. In residential landscapes, turf area shall not exceed 35% of the total landscaped area.
- H. In commercial, industrial, and institutional landscapes, turf areas shall not exceed 15% of the total landscaped area, outside of active recreation areas.